

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MALCOLM FISHER and U.S. POSTAL SERVICE,  
POST OFFICE, Hoffman Estates, IL

*Docket No. 99-2321; Submitted on the Record;  
Issued March 29, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective June 22, 1999, on the grounds that appellant had no further disability or injury residuals, causally related to his accepted bilateral heel spurs.

This case is on appeal for the second time. On December 13, 1977 appellant, then a 59-year-old mail carrier, filed an occupational disease claim alleging that the heels of his feet became increasingly painful while delivering mail and that his condition progressively worsened. Appellant stated that he first became aware that the condition was caused or aggravated by his employment on June 20, 1977. The Office accepted the claim for permanent aggravation of bilateral heel spurs. Appellant was released to limited duty in November 1977 and he subsequently retired on December 1, 1998. Appellant did not return to any type of employment following his retirement.

On June 8, 1979 the Office awarded appellant a schedule award of 15 percent permanent impairment for each foot, effective for the period December 1, 1978 through February 4, 1980. Following the expiration of appellant's schedule award, the Office reinstated compensation benefits and advised that it would do so as long as his injury-related disability prevented him from returning to any employment.

By decision dated June 15, 1983, the Office terminated appellant's compensation effective July 14, 1983. On August 4, 1983 appellant requested reconsideration. By decision dated November 17, 1983, an Office hearing representative affirmed the June 15, 1983 decision.

On November 23, 1983 appellant filed an appeal with the Board. The Director of the Office thereafter filed a motion to the Board to remand the case so that the Office could reconsider the case pursuant to 5 U.S.C. § 8128(a). The Office had determined that the medical evidence had not been adequately developed. On April 24, 1984 the Board issued an order remanding the case to the Office for further development.

On remand, the Office reinstated appellant's compensation benefits and further developed the medical evidence. On December 22, 1997 the Office requested that Dr. Richard Gorski, one of appellant's treating physician's provide a medical opinion as to whether appellant's bilateral heel condition was still permanently aggravated by his prior work exposure or whether the condition had resolved. On March 6, 1998 the Office made a second request of Dr. Gorski, however, it only received brief responses to questions posed in the Office request letter with no physician signature. Consequently, on September 10, 1998 the Office later referred appellant, along with the case file and statement of accepted facts to Dr. Richard Sidell, a Board-certified orthopedic specialist, for evaluation of any continuing work-related disability.

In his October 6, 1998 report, Dr. Sidell indicated that on June 20, 1977 appellant was employed as a letter carrier with the employing establishment and after 10 to 12 years in that position he had gradually noticed discomfort in his heels. He related that appellant's duties of walking his mail route was determined to have caused an aggravation of bilateral heel spurs, however, he was unclear how the cause of appellant's condition could only be attributed to his walking at work. Dr. Sidell also reviewed x-rays of June 1983 and September 24, 1998 and indicated that both showed small bony spurs on both heels in the lateral projections. He further related that the September 24, 1998 x-ray report showed no significant change from the previous x-ray. On examination, Dr. Sidell stated that appellant did not demonstrate any significant pain avoidance behavior and that his feet appeared normal for his age. He indicated that appellant was able to do a toe and heel stand without difficulty and was found to have walked approximately 100 feet without evidence of significant discomfort. Dr. Sidell reported that appellant complained of discomfort with extreme light pressure over the anterior aspect of the heel on the plantar surface with inconsistencies of his complaint. At times, he related that appellant reported discomfort with light touch and at other times there was minimal discomfort with fairly firm touch in the same area. Dr. Sidell diagnosed subjective complaints of bilateral heel pain and evidence of minimal bony spurs on x-rays. He further stated:

"It is unclear ... how [appellant's] complaint either of 1977 or up to date are related to any specific work injury. They appear to be more related to a general condition of life.

"[Appellant] has findings suggestive of minimal plantar fascitis based on subjective complaints only and not objective findings. The visible bony spurs seen on x-rays are x-ray findings only and not indicative of injury or pathology.

"[Appellant's] current condition does not appear to be related to a specific injury but rather is related to a condition of life. I do not feel there is any medical evidence for continuing aggravation of a specific work injury.

"... [Appellant's] current condition is not related to an injury and the residuals of the heel spurs are not incapacitating [sic] or disabling at this time.

"... [Appellant's] current condition does not prevent him from his date[-]of[-]injury job as a letter carrier. His current condition could probably easily be handled with a new set of orthotics or proper heel cushioning.

“It is my feeling that the bony spurs noted on x-rays do not in itself disable [appellant]. [Appellant] does, however, have other medical conditions, which may be disabling to him. These would be his age and general health....”

On May 20, 1999 the Office proposed to terminate appellant’s compensation and medical care benefits on the basis that his accepted work-related condition of aggravation of bilateral heel spurs had resolved. The Office informed appellant that he had 30 days with which to submit additional factual and medical evidence if he disagreed with the proposed action.

In a letter dated June 14, 1999, appellant disagreed with the proposed action. Appellant argued that the Office improperly relied on the unsupported conclusion of Dr. Sidell that the accepted work-related condition had resolved and that his conclusion contradicted the opinions provided by previous physicians, when termination of benefits had been considered in 1983.

Accompanying appellant’s letter was a June 1, 1999 report from Dr. Matthew Samuelson, a Board-certified orthopedic specialist. He provided that appellant was 70 years of age who complained of bilateral heel pain and further discussed x-ray findings, which revealed plantar calcaneal spurs bilaterally. Dr. Samuelson noted that appellant had not recalled any particular trauma that caused the pain and thought it to be have originated from walking, which he noted appellant did as a letter carrier. Dr. Samuelson further reported that appellant currently had pain under both of his heels but indicated that appellant’s symptoms seemed to be consistent with plantar fasciitis, a condition that can be intermittent in nature. He stated that appellant may go through times of no pain and others where the pain may be quite significant. Dr. Samuelson then discussed appellant’s treatment and follow-up care.

On June 21, 1999 appellant submitted reports from Dr. Mark Gross, a Board-certified orthopedic specialist, dated June 16, 1999. Dr. Gross indicated in his letter report, that appellant had been evaluated for chronic bilateral foot problems experienced over the past 22 years, which had been diagnosed as chronic plantar fasciitis and calcaneal exostoses. He also stated that this condition caused appellant considerable disability, preventing him from any sustained standing or walking. Dr. Gross further stated that appellant was capable of sedentary work.

By decision dated June 22, 1999, the Office terminated appellant’s compensation effective that date on the grounds that appellant failed to submit medical evidence establishing that his accepted work-related aggravation of bilateral heel spurs was still present. The Office found that the weight of the medical evidence resided with Dr. Sidell, the second opinion examiner who provided his detailed medical report and well-reasoned opinion that appellant’s accepted condition had resolved.

The Board finds that the Office properly terminated appellant’s entitlement to monetary compensation and medical benefits effective June 22, 1999, on the grounds that appellant had no further disability or injury residuals, causally related to his accepted work-related aggravation of bilateral heel spurs.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>4</sup> The Office met its burden to terminate both in this case through the well-rationalized second opinion evaluation of Dr. Sidell.

The medical evidence submitted by Drs. Samuelson and Gross is of insufficient probative value to overcome the weight of the well-rationalized report of Dr. Sidell, the second-opinion examiner. Drs. Samuelson and Gross documented appellant's history of exposure, x-ray findings in 1983 and 1998 and findings on examination, however, their reports fail to explain why appellant continued to be disabled due to his accepted work-related aggravation of bilateral heel spurs. Dr. Sidell, in his October 6, 1998 report discussed appellant's work exposure and medical history, reviewed the x-ray results and performed a complete physical examination. He found no objective medical evidence for continuing aggravation of the work injury and that the residuals of the heel spurs were not disabling. While Dr. Sidell found that appellant may actually be disabled, he specifically stated that appellant's current condition was the result of age and his many other nonemployment-related medical conditions. Therefore, the Office properly relied on Dr. Sidell's report in terminating appellant's benefits.

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>4</sup> *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

The decision of the Office of Workers' Compensation Programs dated June 22, 1999 is hereby affirmed.

Dated, Washington, DC  
March 29, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member